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OFFICE OF PETITIONS

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|----------------------------|---|
| In re Application of | : |
| Toshihilko Kataoka | : |
| Application No. 10/811,410 | : |
| Filed: March 26, 2004 | : |
| Attorney Docket No. | : |
| JP920030050US1 | : |
| Title: METHOD FOR DATA | : |
| PROTECTION FOR REMOVABLE | : |
| RECORDING MEDIUM | : |

This is a decision on the petition filed November 7, 2006, pursuant to 37 C.F.R. §1.137(b)¹, to revive the above-identified application.

It is noted that Petitioner's representative has placed the wrong filing date and the wrong title on this petition. Petitioner's representative is reminded that errors such as occurred can result in loss of rights and care must be taken to avoid such.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. §1.113 in a timely manner to

1 A grantable petition pursuant to 37 C.F.R. §1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

the final Office action mailed February 28, 2006, which set a shortened statutory period for reply of three months. No extensions of time under the provisions of 37 C.F.R. §1.136(a) were obtained, and no response was received. Accordingly, the above-identified application became abandoned on May 29, 2006. A notice of abandonment was mailed on September 28, 2006.

With the present petition, Petitioner has submitted the petition fee and the proper statement of unintentional delay. Petitioner has further included a Request for Continued Examination (RCE) under 37 C.F.R. §1.114, the associated fee, and an amendment. No terminal disclaimer is required.

Petitioner's representative has met requirements (1) and (2) of Rule §1.137(b). The fourth requirement is not applicable.

Regarding the third requirement of Rule §1.137(b), although the proper statement of unintentional delay was submitted, Petitioner's representative added the following sentence: "the Notice of Allowance (emphasis added) was misfiled and was not considered by the Applicant, before the application became abandoned."

It does not appear that the Examiner has mailed a notice of allowance. The present application became abandoned for failure to respond to a final Office action². Petitioner's representative will need to clarify this issue on renewed petition.

Furthermore, it does not appear that the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue.

For the above reasons, the petition must be **DISMISSED**.

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.137(b)". This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail³, hand-delivery⁴, or facsimile⁵.

² Perhaps this is a typographical error?

³ Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

If responding by mail, Petitioner's representative is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned.

Furthermore, the electronic record reveals that a Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address was submitted on August 18, 2006. The request cannot be accepted, and has not been entered.

The request was submitted by one Ismail Lakkis, who has asserted that he is the inventor of the present application, and has requested that the practitioners associated with Customer Number 44279 be appointed. It is noted however that Mr. Lakkis, contrary to his assertion, is not the inventor of the present application, as his name does not appear on the declaration which was included on filing⁶. Consequently, the request cannot be accepted.

Furthermore, Customer Number 44279 is associated with the assignee of the present application, located in California, and it is noted that Petitioner's representative is a practitioner who is located in Florida.

It is noted that the address listed on the petition differs from the address of record. As indicated above, the change of correspondence address that has been filed in this case cannot be accepted. If either Mr. Lakkis or Petitioner's representative desires to receive future correspondence regarding this application, a proper change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to each of these individuals. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225⁷. All other inquiries

4 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

5 (571) 273-8300- please note this is a central facsimile number.

6 Office records reveal however that Mr. Lakkis is an assignee of the present application. Perhaps he checked the wrong box on this form?

7 Petitioner's representative will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner's representative is reminded that no telephone discussion may be

concerning examination procedures or status of the application
should be directed to the Technology Center.



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controlling or considered authority for any further action(s) of Petitioner's
representative.